IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

WP(C).No. 32259 of 2004(M)

CMA.15/1993 & C.M.A. 31/1993 OF II ADDL. DISTRICT COURT, TRIVANDRUM.

.....

PETITIONERS:

1. **STATE OF KERALA, REP. BY THE CONSERVATOR OF FORESTS, SOUTHERN CIRCLE, KOLLAM.**
2. **THE DIVISIONAL FOREST OFFICER, THIRUVANANTHAPURAM.**

BY SPL. GOVT. PLEADER (FORESTS) SRI. RENJITH THAMPAN.

RESPONDENTS:

1. **M.C.BABU, PALATHOPIL, CHACKAI, THIRUVANANTHAPURAM.**
2. **THE SECOND ADDL. DISTRICT JUDGE, THIRUVANANTHAPURAM.**

BY ADV. SRI.R.BINDU (SASTHAMANGALAM).

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.32259/2004:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER NO. G3-6568/81 DTD. 23/07/1992.

EXT.P.2: COPY OF THE JUDGEMENT IN C.M.A. 15/93 AND 31/1993 DTD. 28/11/2003.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

PIUS C. KURIAKOSE, J.

W.P.(C)No. 32259 OF 2004

Dated this the 31st day of July, 2007

J U D G M E N T

In this writ petition under Articles 226 and 227 of the Constitution of India the State represented by the Conservator of Forests, Southern Circle, Kollam and the Divisional Forest Officer, Thiruvananthapuram challenges the order Ext.P2 passed by the learned II Addl. District Judge, Thiruvananthapuram in CA. 15/93 on the files of the learned Judge. In fact that CMA as well as CMA. 31/93 which was disposed of by the learned District Judge by Ext.P2 common order were directed against confiscation orders issued by the second petitioner under Section 61 A of the Kerala Forest Act. According to the petitioners, on 2-8-1981 on getting secret information, the Flying Squad Officer along with his staff raided the house of S.Abubacker at 5 a.m. and seized one sawn tusk and thereafter on the same day converted pieces of dust was seized from the house of the first respondent M.C.Babu who was the appellant in CMA. 15/93. While so on 5-8-1981 a decaying carcass of wild elephant was located in the interior of Chemnikala forest in Ponmudi beat and it was seen that both the tusks of the dead elephant were removed. There were sufficient reasons for believing that the converted pieces recovered

from the house of the first respondent Babu and those recovered from Sri.Aboobacker were stolen tusks of the dead elephant. On the basis of the enquiry the forest officer became convinced that the ivory pieces recovered from the house of Sri.Babu the first respondent belonged to the Government and accordingly ordered confiscation of the vehicle and the ivory pieces (along with the sawn tusk and the rosewood pieces which had been seized by the flying squad relating to first respondent what the appellants described is the same incident) were ordered to be confiscated. In the first instance the District Court set aside the order of confiscation in so far as the same related to the ivory pieces recovered from the house of the first respondent, but against that order the first respondent preferred a C.M. Appeal and the District Judge set aside order of confiscation. Against the order of the District Judge the petitioners filed O.P. before this court and this court set aside the judgment of the District Court and remitted the matter back to the second petitioner for fresh decision. After remand the second petitioner issued Ext.P1 and it is Ext.P1 which has been set aside by the learned District Judge in Ext.P2. Even though the C.M. Appeal preferred by the first respondent was allowed the learned District Judge dismissed the C.M.Appeal preferred by the owner of the

confiscated vehicle which was carrying the sawn tusk and the ivory pieces which were also involved in the confiscation order. The petitioners challenge Ext.P2 on various grounds. According to the petitioners the learned District Judge erred in upholding that the permission under section 69 of the Forest Act is not available to ivory. According to the petitioners it should have been held that section 39 of the Wildlife Protection Act 1922 is applicable to the facts of the case and hence as per section 39 the ivory pieces seized has become the property of the Government. It is urged that following the judgment of the Supreme Court in Indian Handicrafts Emporium v. Union of India, 2003(7) SCC 589 it should have been held that ivory seized by forest officials are liable to be confiscated in the light of the total ban under Section 49-C(1)(3) and (5) of the Wildlife Protection Act. According to the petitioners in view of the principles laid down by the Supreme Court there is a complete prohibition of trade of ivory and therefore the confiscated pieces cannot be handed over to the first respondent at all.

The divergent approach which has been taken by the learned District Judge in respect of a single offence OR.95/81 and constituting a single transaction of confiscation of two tusks, rosewood and vehicle

is also unsustainable. The confiscation order was issued on the basis of reliable testimony of various witnesses which conclusively established that the ivory seized from the house of the first respondent belonged to the dead elephant whose carcass was recovered from the forest. District Judge should not have relied on the documents produced by the first respondent. Those documents relied on is entirely different transaction and in the absence of a proper stock register kept by the first respondent the document should not have been relied.

I have heard the submissions of Sri.Ranjith Thampan, Special Government Pleader (Forest) on behalf of the petitioners and Smt. Sasthamangalam R.Bindu, learned counsel for the first respondent. Sri.Ranjith Thampan would assail Ext.P2 order to the extent it relates to CMA. No. 15/93 on the various grounds raised in the writ petition. Sri.Ranjith Thampan would refer to sections 49A and 49B of the Wildlife Protection Act, 1972 and to Sections 39, 39(1) 42, 43, 44 51 and subsection (2) of section 2 of the same Act. He placed strong reliance on the judgment of the Division Bench of this Court in State of Kerala v. Thankaraj, 2000(1) KLT 633

(PIUS C.KURIAKOSE, JUDGE)

ksv//